



June 29, 2020

Mr. Mark Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
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Re: NW Energy Coalition comments on Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases Electricity, Docket UE-190837, Second Round.

Dear Mr. Mark Johnson,

Thank you for the opportunity to submit a second round of comments on Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases Electricity, Docket UE-190837. In response to questions posed by the Utilities and Transportation Commission (Commission) on June 2, 2020, NW Energy Coalition (Coalition) offers the following comments relating to this Clean Energy Transformation Act (CETA) rulemaking. First, the Coalition offers responses to the staff questions on this matter, followed by general comments on other aspects of the draft rules. Also, attached, are a redlined copy of the rules with our specific comments and suggestions.

The Coalition is generally supportive of the current version of the draft rules, which contain many improvements from the previous version.

This version of the rules does a better job recognizing that resource needs can be met in many different ways by a variety of resources. As we have previously commented in relation to the planning and compliance aspects of CETA rulemaking, the term “resource” should broadly include generation, conservation, distributed generation, demand response, efficiency, storage and other system actions or programs that alone or in combination can be coordinated by the utility to reduce, shift, manage and meet a utility’s customer demands. This version of the draft rules for resource procurement makes important improvements to accommodate this broader definition of resource that is essential to the implementation of CETA.

The Coalition also strongly supports the expanded provisions around equity, another element that is essential to all aspects of CETA implementation, from planning to procurement. Our comments below point to a couple of the significant improvements regarding equity considerations for resource procurement in these draft rules.

We also support the clearer requirements for an independent evaluator to participate throughout the RPF process, but point out that the process could be clarified even further in the final rules. Importantly, we recommend the re-instatement of the IE’s responsibility to

submit their draft evaluation of bids to the Commission and file it in the docket, as well as the final evaluation, which we discuss below.

RESPONSES TO THE COMMISSION QUESTIONS

1. The draft rule at WAC 480-107-015(4), Solicitation Process, shortens the RFP filing period requirement from 135 days to 45 days after a utility files its IRP, reduces the 60-day comment period to 30 days, and requires a Commission decision 60 days after the RFP is filed. The intended outcome is to reduce the time between identifying the resource need and pursuing resources through and RFP. Does the draft rule contain adequate time for public involvement to assure that, in most circumstances, stakeholder concerns are resolved? If not, please recommend an alternative timeline for these filing requirements.

Public and Commission staff involvement, and the transparency of the resource selection that results from adequate involvement, is essential to ensuring fair and effective resource procurement that will lead to the lowest reasonable cost resource mix for customers. Beginning this involvement earlier in the process, rather than later, is beneficial because it will result in an effective use of time for all involved. If utilities are “required”, rather than “encouraged”, to consult with commission staff and interested persons during the development of the IRP [WAC 480-107-015(2)], we believe the reduced timeframe for the comment period from 60-days to 30-days, as currently provided in the draft rules, may be manageable. However, the filing time after the IRP might need to be longer than 45 days to accomplish this consultation. Consequently, we recommend a 60-90 day period after the filing of the IRP or CEIP for the filing of the RFP, a requirement for consultation with staff and interested parties prior to filing the RFP, and a 30-day comment period after the RFP is filed.

If the Commission does not agree that a requirement for consultation prior to filing the RFP is necessary, we do not believe the 30-day review period is sufficient and would request the Commission restore the earlier 60-day review period.

2. The draft rule at WAC 480-107-015(4), Solicitation Process, includes the requirement that the utility “must accept bids for a variety of energy resources that may have the potential to fill the identified resource needs including, but not limited to...”. What burden does this requirement impose? What are the benefits or drawbacks of the rule providing that the utility “may accept bids”?

The Coalition strongly supports allowing a variety of energy resources that have the potential to fill all or part of an identified resource need to bid into an RFP. If the utility clearly establishes resource needs and criteria in the RFP, this allowance should not place any additional burden on the utility or other parties. In fact, this provision may help the utility find solutions to needs that they may not have known much about or learn about pricing and costs of alternative approaches.

3. The “Contents for a solicitation” section of draft rule WAC 480-107-025(5) requires a sample evaluation rubric or, in the alternative, an explanation of the evaluation criterion.

This requirement is intended to better enable bidders to design projects and bids that satisfy the resource needs as identified in the RFP. Does the draft language improve the transparency of the evaluation process? If not, please recommend an alternative approach or alternative components of the evaluation criterion that will provide the necessary transparency.

The Coalition supports the addition of an evaluation rubric, however, **both** the rubric and explanation of the evaluation criterion should be required. This requirement will lead to increased clarity in the initial RFP, which in turn will lead to higher quality and better matching bids. This requirement will make more efficient use of everyone's time – including the bidder, the utility, UTC staff and stakeholders and lead to better outcomes for customers.

4. Comments received from stakeholders in this docket on March 13, 2020, presented a variety of options for determining when a utility should be required to use an independent evaluator. Several commenters recommend including a capacity threshold ranging from 20MW to 100MW.

The Coalition recommends reverting to the previous threshold of 50 MW for the use of the independent evaluator (IE). The independent evaluator is an important tool for ensuring a fair and effective solicitation process and procurement outcome.

One alternative to using a capacity threshold is to require an IE for all solicitation processes. Requiring an IE for all resource procurement solicitation processes is perhaps the best way to ensure fair and effective processes that lead to the best outcome for customers. However, we are sympathetic to the argument that requiring an IE for all solicitations might be time-consuming or burdensome for small resource acquisitions. Consequently, 50 MW is an appropriate compromise that allows resource acquisitions on a limited scale to proceed without an IE, but larger amounts to benefit from the transparency and assurances that only an IE process can provide. Additionally, the rules should make clear that issuing a series of smaller RFP's to avoid a threshold is expressly prohibited.

5. The draft rule at WAC 480-107-135(1)(a) provides for the use of an independent evaluation when a utility has a financial interest in the resource choice, including when a utility is considering repowering one of its owned resources at the end of the resource's life to fulfill the resource need identified in the RFP. The draft rule requires that the repowering of the utility-owned resource be evaluated with the other responsive bids to the RFP. What are the benefits and drawbacks of this requirement?

As recognized by this draft rule, there are a variety of resources that will be able to meet utility needs, however, finding the optimal combination of resources should be the goal. This requires fair and effective evaluation of all resource choices, which includes any utility investment in repowering owned resources. Therefore, we strongly support this addition to the draft rules.

The Coalition raises the question of what qualifies as “repowering”? Is this defined in the WAC under a different section or would a definition of “repowering” be useful here?

6. Under certain circumstances, the draft rules at WAC 480-107-AAA require utilities to use independent evaluator, approved by the Commission, to assist in the evaluation and ranking of bids. What qualifications demonstrate the independent evaluators have the training or experience to appropriately weigh and consider CETA’s equity provisions in their ranking of project bids?

The Coalition supports the suggestion of Renewable Northwest in their first-round comments in this docket that the Commission look to the Oregon competitive bidding rules as a framework for IE selection criteria and qualifications.

7. In previous comments, stakeholders have requested various provisions for the consideration of minority-, women-, disabled- and veteran-owned businesses as bidders or subcontractors in utility RFPs. Please provide citations to existing federal, state, or local laws applicable to the requirements of utility RFPs related to minority-, women-, disabled- or veteran-owned businesses and how these affect the language in the draft rule.

The Coalition supports the comments of Climate Solutions, submitted June 29, 2020, in their second round of comments on the draft rules, on this question.

OTHER COMMENTS ON THE DRAFT RULES

WAC 480-107-007 Definitions.

Under definitions we suggest the term “avoided costs” be modified and reinstated, or at least insert a reference to a definition already in statute. The term is used in WAC 480-107-025 and -035. Also, a definitional clarification of “type of bid”, used in -015 and -025 would be appreciated.

WAC 480-107-015 The solicitation process.

The amendments and additions to 480-107-015 accomplish a number of improvements, from clarifying the additional equity information the utility must request from bidders, to changing the focus from acquisition of generation to language that better reflects the acquisition of a range of resources to meet the utility’s needs.

The Coalition recommends that the rules specify that the solicitation requirements apply to a resource need identified in the IRP or the Clean Energy Implementation Plan (CEIP). While the CEIP must be “consistent with” the IRP, there is a possibility that the CEIP will identify a need for resources additional to the IRP. Solicitation requirements should therefore apply equally to both.

Another change we suggest for this section is at (2), to *require* utilities to work with staff and other interested persons during the development of the RFP, rather than “encourage”. This recommendation is discussed above in answer to question one posed by the Commission.

WAC 480-107-025 Contents of the Solicitation.

The Coalition recommends striking a portion of the RFP requirements language in subsection (1). Suggesting that the utility identify “the type of technology or fuel source necessary to meet a compliance requirement” directly contradicts the language in WAC 480-107-015, The solicitation process, subsection (7) that provides opportunity for a variety of resources to bid into an RFP. We therefore recommend deletion of this specific language from WAC 480-107-025 (1). See attached redlines suggestions.

WAC 480-107-AAA Independent evaluator for large resource need or utility or affiliate bid.

The Coalition supports the changes to the draft rules that result in clarifying that the independent evaluator’s work now commences with the start of the RFP process, this is an essential element of the use of an IE. We also support the important step of involving Commission staff and other interested persons in the IE selection process.

The Coalition recommends restoration of the previous language at WAC 480-107-AAA (5) independent evaluator, which is dropped in this final draft:

(5) The independent evaluator will provide an initial report to the commission at the conclusion of the process, before reconciling project rankings with the utility, and a final report after reconciling rankings with the utility in accordance with WAC 480-107-035(4) Project ranking procedure.

Each step in this process is important to ensure fair and effective process throughout the solicitation.

WAC 480-107-035 Project ranking procedure.

The Coalition appreciates the strengthening of the draft rules in this section with the addition of the requirement to rank benefits to vulnerable populations. This is an important element of CETA, and cannot be overlooked here in the solicitation process.

There are a few places where this new version of the draft rules drops important elements. First, the current version drops the requirement in subsection (2) to consider “environmental effects including those associated with resources that emit carbon dioxide” this requirement should be reinstated. The redline version of our comments suggests language to restore this requirement.

Second, subsection (7) in the previous draft rules included more specific language related to UTC filing requirements. The previous draft was clearer and that language should be utilized here as reflected in our redline comments.

As in our previous comments in this docket, we strongly urge the Commission to allow stakeholder participation in the ranking discussion, as is done in Oregon. This would require, at minimum, that the initial bids received be posted in the open docket for review and comment, and that there be time for stakeholders to comment.

WAC 480-107-060, Acquisition of demand response.

The Coalition supports the addition of this section of rules as a much needed element. However, the current proposed language is problematic, in that it seems to allow the utility to decide pre-bid whether the identified resource need can be fulfilled by demand response. This determination should be made by bidders, through a review of the RFP criteria, and by the utility after the bids are supplied through the process. We therefore recommend removing that language from this section of the draft rules as follows:

~~“A demand response bidder may participate in the bidding process. If demand response may meet some or all of the identified resource need, the utility must make a good faith effort to provide sufficiently detailed information that allows a bidder the opportunity to respond with a bid, including stacked values of benefits and costs”.~~

WAC 480-107-065 Acquisition of conservation and efficiency resources.

The Coalition appreciates the changes in this section of the draft rules, which seem to support the points made in our previous first round comments on the draft rules in this docket. The Coalition offers only minor clarifying edits to this section of the draft rules in our redline comments.

WAC 480-107-075 Contract finalization.

In negotiating final terms of a purchase agreement, it is critical that the utility and the bidder be on equal ground in terms of the ability to negotiate changes. For example, it would be inappropriate for a utility to negotiate new terms, but prevent the bidder from also making changes, including changes to price, to accommodate the new requested terms. It appears that the rules here are broad enough to ensure this two-way negotiation, and appropriately makes clear that final contract negotiations must be based on the RFP. We urge the Commission to review this section of the rules to ensure that ensuing negotiations provide equal footing for the utility and the bidders.

WAC 480-107-115 System emergencies.

The Coalition is uncertain what qualifies as a system emergency, and requests more information about this definition and its use in the draft rules.

WAC 480-107-125 Interconnection costs.

This section should also require a utility to provide all necessary information to a bidder that would enable a bidder to accurately forecast interconnection costs for their bid. See our redlines comments for suggested language addition.

WAC 480-107-135 Conditions for purchase of resources from a utility, a utility's subsidiary or affiliate.

The current version of the draft rules is strengthened by the requirement at (2) that repowering proposals must be part of a resource acquisition RFP. The other smaller changes in this section level the playing field and create a fairer bidding climate for all bidders. We strongly support this section as currently drafted.

WAC 480-107-145 Filings -Investigations

The addition of specific reporting requirements for the summary of responses strongly improves this section of the draft rules. In particular, the Coalition appreciates the addition of subsections (g)-(j), which help to report information that will allow tracking of the equity related elements of resource solicitation.

Surprisingly, this section of the draft rules has inexplicably changed the amount of time a utility has to file a summary report of any RFP process with the Commission from 30 to 90 days. Since the rest of the reporting and response periods are shortened in this rule version, it is not clear why this reporting period would be lengthened.

The Coalition appreciates the opportunity to comment on the proposed rules.

Respectfully submitted,

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